



September 26, 2024

Organisation for Economic Co-operation and Development
Centre for Tax Policy and Administration
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Re: Comment Letter on the June 2024 Administrative Guidance

The National Foreign Trade Council (the “NFTC”) is providing written comments on the Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global AntiBase Erosion Model Rules (Pillar Two), published on 17 June 2024 (the “June 2024 Administrative Guidance”) and the additional interpretative CbCR guidance released on 27 May 2024.

The NFTC, organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities. Our members value the work of the OECD and the Inclusive Framework (“IF”) in establishing and maintaining international tax and transfer pricing norms that provide certainty to enterprises conducting cross-border operations.

General Comments

NFTC appreciates the work of the IF in providing additional clarity and guidance on Pillar Two as we requested in prior comment letters. We support the stated purpose of Pillar Two and efforts to reduce the administrative burden. However, NFTC continues to request that the OECD solidify safe harbors, ensure consistent application of the rules, and clarify the implementing mechanism. We reiterate our call for a dispute resolution mechanism and understand that work is underway to develop such a mechanism.

Specific Comments

QDMTT Safe Harbor

We appreciate the additional guidance and clarifications provided in the June 2024 Administrative Guidance. The QDMTT Safe Harbor is a helpful tool in reducing the onerous compliance requirements of the QDMTT. We provide suggestions for further guidance to increase the utility of the Safe Harbor.

Section 3(c) of the “Standards for a QDMTT Safe Harbour” provides that the local financial accounting standard may be used unless one or more Constituent Entities in a jurisdiction has a different fiscal year than the fiscal year of the consolidated financial statements of the Multinational Enterprise (“MNE”) Group. The purpose of the rule is to ensure consistency between the GloBE and QDMTT rules.

Furthermore, it aims to reduce the risk of MNEs choosing the financial accounting standard that produces a better result.

Due to the voluminous number of entities certain MNEs have, we suggest that Section 3(c) focus on consistency between the fiscal year of material Constituent Entities within a jurisdiction and the fiscal year of the consolidated financial statements of the MNE Group. In that vein, we recommend that the OECD consider introducing a de minimis rule whereby dormant and immaterial entities with fiscal year ends that differ from the consolidated financial statements may be excluded from this rule. These entities will have minimal impact, if any, on the QDMTT or GloBE calculations, whereas the burden of changing over the fiscal year may be material.

In addition, we suggest that Section 3(c) accommodate ordinary business events. Business events such as formation, dissolution, or acquisition of entities on dates that are not aligned with the consolidated financial statements would force a QDMTT jurisdiction to use the accounting standard of the ultimate parent entity. Since these events are not tax-driven and cannot always be aligned with the MNE Group fiscal year, this rule introduces inconsistency and complexity in forecasting and compliance, as the required QDMTT Accounting Standard in a jurisdiction could change from year to year. In addition, if the QDMTT Accounting Standard were to change each year, this would require complex transitional adjustments as carrying values and deferred taxes may need to be remeasured. Currently, there are no rules that address how these transitional adjustments should be made. As such, we encourage the OECD to exclude ordinary business events. In case of an acquisition or divestment, the OECD should provide a reasonable period (at least three years) to align the fiscal year end and not require changing the methodology between years, which would reduce consistency and transparency.

Safe Harbor Permanence

We continue to be concerned with the compliance burden¹ for those MNE Groups who operate primarily in jurisdictions with corporate tax rates well in excess of 15%. For those MNE Groups, the expense of compliance will likely exceed the amount of additional tax that will be collected. With each tranche of additional administrative guidance issued and each additional layer of complexity, the case for mitigating the compliance burden for the covered MNE Groups least likely to owe substantial additional tax grows stronger. We reiterate our call for the IF to make the Transitional CbCR Safe Harbor (and the Transitional UTPR Safe Harbor) permanent. There is a significant need to focus on utilizing normal-course taxpayer records that the company can already calculate rather than forcing companies to spend potentially substantial dollars in compliance fees with little or no increase in tax liability.

Deferred Tax Liabilities

The June 2024 Administrative Guidance on determining whether deferred tax liabilities that have reversed within five years and, therefore, do not need to be recaptured provide a roadmap to follow in this area. However, these rules are dauntingly complex. While the Unclaimed Accrual Election could be useful to certain taxpayers, the Unclaimed Accrual Election can only be made at the level of granularity at which DTLs are tracked. Accordingly, taking maximum advantage of the election may require new tracking mechanisms in addition to all the additional overall tracking already created by Pillar Two. The IF should consider simplified approaches that do not create further tracking mechanisms.

¹ See <https://taxfoundation.org/data/all/federal/irs-tax-compliance-costs/>

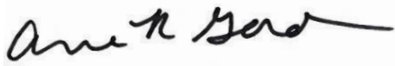
Adjusted Covered Taxes

The June 2024 Administrative Guidance regarding how Adjusted Covered Taxes of Constituent Entities should be determined when there are divergences between GloBE and accounting carrying values will essentially require MNE Groups to separately track GloBE carrying value. This represents another step down the road of MNE Groups having to maintain a third set of accounts (GloBE, book, and tax). Although the June 2024 Administrative Guidance states that further simplification measures to mitigate the compliance burdens in this area will be considered, this does little to alleviate overarching concerns regarding the substantial and costly compliance burden imposed by these rules.

Conclusion

NFTC members are working to implement systems to ensure Pillar Two obligations are met. We urge the IF to continue working to reduce the compliance burden and put into place permanent Safe Harbors. NFTC appreciates the continued engagement with the business community by the IF. We are happy to answer any questions or clarify any of the comments raised.

Sincerely,



Anne Gordon
Vice President for International Tax Policy

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